

1 UNITED STATES DISTRICT COURT  
 2 DISTRICT OF NEVADA  
 3 BEFORE THE HONORABLE MIRANDA M. DU, CHIEF DISTRICT JUDGE  
 4 ---o0o---

4 Roger Palmer, Chad :  
 5 Moxley, Firearms Policy :  
 6 Coalition, :  
 7 : No. 3:21-cv-268-MMD-CSD  
 8 Plaintiffs, :  
 9 :  
 10 -vs- : July 16, 2021  
 11 :  
 12 Stephen Sisolak, Aaron :  
 13 Ford, George Togliatti, : United States District Court  
 14 Mindy McKay, Joseph : 400 S. Virginia Street  
 15 Lombardo, et al., : Reno, Nevada 89501  
 16 :  
 17 Defendants.  
 18 \_\_\_\_\_:

12 TRANSCRIPT OF MOTION HEARING

13 A P P E A R A N C E S:

14 FOR THE PLAINTIFF: Raymond DiGuiseppe  
 15 David O'Mara  
 16 Adam Kraut  
 17 William Sack  
 18 Attorneys at Law

19 FOR STATE DEFENDANT: Jeffrey Conner  
 20 Attorney at Law

21 FOR CLARK COUNTY DEFENDANT: Nicholas Crosby  
 22 Attorney at Law

23 FOR DOUGLAS COUNTY DEFENDANT: Zachary Wadle

24 Proceedings recorded by mechanical stenography produced  
 25 by computer-aided transcript

Reported by: KATHRYN M. FRENCH, RPR, CCR  
 NEVADA LICENSE NO. 392  
 CALIFORNIA LICENSE NO. 8536

1 Reno, Nevada, Friday, July 16, 2021, 1:30 p.m.

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3  
4 **\*\*\*\*ZOOM CONFERENCE EXPERIENCING AUDIO INTERRUPTIONS**  
5 **THROUGHOUT THE PROCEEDINGS\*\*\***  
6

7 THE CLERK: 3:21-civil-268-MMD-WGC,  
8 Roger Palmer, et al. versus Stephen Sisolak, et al.

9 Present by video conference for plaintiff  
10 are David O'Mara, Raymond DiGuiseppe, Adam Kraut, and  
11 William Sack.

12 Present for the State defendants,  
13 Jeffrey Conner.

14 Present for the Clark County defendants,  
15 Nicholas Crosby.

16 Present for Douglas County defendants,  
17 Zachary Wadle.

18 THE COURT: All right. Good afternoon,  
19 counsel.

20 For the record, I have reviewed the Motion  
21 For Preliminary Injunction, which is ECF number 6; and,  
22 really, the main substantive Response from the State  
23 defendants, ECF number 31; and the Reply brief, ECF  
24 number 40. I also skimmed through the brief Response  
25 from the County defendants, basically deferring to the

1 State defendants.

2 I don't have any questions on the arguments  
3 relating to the Takings Clause Claim, so I want counsel  
4 to focus on the Second Amendment Claim. And with  
5 that, I'll hear arguments, first, from counsel for the  
6 plaintiff.

7 MR. DIGUISEPPE: Good afternoon, Your Honor.  
8 This is Ray DiGuiseppe on behalf of the plaintiffs.

9 First of all, thank you for accommodating  
10 us with the Zoom feeds, that makes it much more  
11 convenient. We appreciate that.

12 And just to start off, and to be clear,  
13 as indicated in the briefing, this isn't a case about  
14 firearms (audio interruption) and background checks.  
15 No one asked any of the tens of thousands of law  
16 abiding, responsible gun owners in Nevada to submit  
17 to a background check or apply for a serial number for  
18 (audio interruption) --

19 THE COURT: I'm sorry. The court reporter  
20 is saying that you are dropping out periodically, so  
21 you need to make sure you speak into your speaker  
22 and slow down. If you're reading, you need to slow  
23 down because the court reporter will not be able to  
24 transcribe if you're reading too fast.

25 MR. DIGUISEPPE: Sure. No problem.

1 I just was saying that there was not an  
2 opportunity for anyone to submit to a background check  
3 or apply for a serial number -- can you hear me better?  
4 Just to be sure.

5 THE COURT: Yes.

6 MR. DIGUISEPPE: Okay. Great.

7 -- which would have actually achieved the  
8 interests the State is indicating that it is advancing  
9 through AB-286. The State just banned the full spectrum  
10 of activity and protected property interests associated  
11 with the process of self-manufacturing firearms; while,  
12 on the other hand, affirmatively precluding the ability  
13 of law abiding Nevadans to comply with the various  
14 systems the State says are being evaded through this  
15 process.

16 THE COURT: But AB-286 does not ban  
17 the possession of all firearms, right? It leaves  
18 alternative channels for possession of firearms,  
19 legally, for self-defense purposes. For example,  
20 serialized firearms, am I right?

21 MR. DIGUISEPPE: A person could acquire a  
22 serialized firearm from a licensed seller of firearms,  
23 that's correct, but what we have here is an entire class  
24 of arms which have already been recognized as lawful  
25 under State law, and constructed and possessed and

1     used as such (audio interruption) in unlawful, and not  
2     allowing anyone to continue with manufacturing of such  
3     arms in the future, all tied to a statutory scheme,  
4     which is based upon a requirement that any such further  
5     self-manufacturing or possession of parts has to be in  
6     compliance with a serialization process that does not  
7     exist and may never exist until, effectively --

8             THE COURT:    But does --

9             MR. DIGUISEPPE:   Sorry?

10            THE COURT:   -- the State have to include a  
11     mechanism for serialization with the ban?

12            MR. DIGUISEPPE:   I think if it's a ban -- I  
13     don't think that a ban is permissible in this sense.  
14     This reaches far, far greater -- has a far greater  
15     reach than any other type of restriction of this (audio  
16     interruption) and there aren't very many.

17            As far as whether there has to be an avenue,  
18     I think there, absolutely, does because otherwise you're  
19     talking about a situation where the activity itself of  
20     manufacturing firearms and being able to possess and  
21     use those arms -- which is all protected by the Second  
22     Amendment -- is absolutely forbidden. And that is not  
23     permissible unless there's some means by which people  
24     are able to comply with the stated interest. If the  
25     stated interest is we want to ensure that everything

1 is serialized, either through tracing, so we can have  
2 background checks and know who has all guns, they can do  
3 that. There are ways in which they can achieve that,  
4 like other states who impose such regulations and are  
5 put in place to allow people to continue with this  
6 protected process (audio interruption) manufacturer  
7 without --

8 THE COURT: I'm sorry. The court reporter  
9 is saying that she is not able to understand you again.  
10 Would you repeat your last statement. And maybe,  
11 perhaps, you're moving around somewhat, if you could  
12 just try to get closer to your microphone.

13 I haven't had any issue like this in other  
14 video conferencing hearings. So, let's try this. It  
15 may be that I have to get you on the phone instead.

16 MR. DIGUISEPPE: All right. I'll try to  
17 just to speak louder, if I can.

18 Is that better?

19 THE COURT: I'm sorry. Give me just one  
20 moment.

21 What is it, Kathy.

22 THE COURT REPORTER: It's not that he needs  
23 to be louder. He just needs to slow down because he  
24 drops off and he is mumbling and I can't understand what  
25 he is saying.

1           THE COURT: So, you also -- she is asking  
2 you to slow down slightly because you tend to drop  
3 off at the end of your sentence, too, which makes it  
4 more difficult to hear.

5           MR. DIGUISEPPE: Okay. All right. I will  
6 do so.

7           So, I think as far as whether there needs  
8 to be some avenue through which to allow people to  
9 continue with the process of self-manufacturing arms,  
10 I think that there must be. A State cannot just simply  
11 ban all of the protected conduct that's associated with,  
12 with manufacturing firearms for lawful purposes, and  
13 allow for no means to comply with the stated interests.  
14 I think it's really important to pay attention  
15 and notice that the stated interest is, in fact,  
16 serialization for traceability purposes and background  
17 checks to identify and know who has what firearms.  
18 And to the extent that that is the only stated interest,  
19 the State has to be able to show that they can't achieve  
20 that through some other reasonably (indecipherable)  
21 tailoring means. And an absolute ban is simply not  
22 constitutionally permissible. Whichever test that  
23 we happen to apply, I mean there's no tailoring,  
24 essentially, at all, when you have a situation like  
25 that.

1                   THE COURT: Well, if I agree, and I think  
2     that the -- assuming that the AB-286 burden conduct  
3     protected under the Second Amendment, I think that  
4     intermediate scrutiny applies, and under that test the  
5     State just has to articulate a significant interest  
6     that -- and a reasonable fit between the challenged law  
7     and the asserted objective. I mean, the case law in the  
8     Ninth Circuit is clear that the State does not have to  
9     adopt the least restrictive means, and so that's why I  
10    asked, under that framework, is the State required to  
11    have a means for serialization? Within that framework,  
12    is what I'm looking for.

13                  MR. DIGUISEPPE: I understand.

14                  Within the framework of the intervening  
15    scrutiny test as recognized by the Ninth Circuit itself,  
16    and the Supreme Court, clearly, the difference between  
17    strict scrutiny and intermediate scrutiny is the nature  
18    of the State's interest, whether it has to be compelling  
19    or important. And the major difference, then, is  
20    just that. Beyond that, they both have to be narrowly  
21    tailored. And in a situation like this, there's not  
22    any form of tailoring when the conduct and the property  
23    is just outright banned. That is not going to survive  
24    even under the most lenient form of intermediate  
25    scrutiny, which, as the Supreme Court has repeatedly



1 said, requires that there be a narrow -- a narrow  
2 tailoring. It's got to be in reasonable proportion with  
3 the interests being served. There's closely drawn  
4 without an unnecessary abridgement. And if the focus,  
5 again, of the State interest is "want to ensure  
6 serialization or traceability purposes," and we want  
7 to ensure that we know who is getting these through  
8 background checks, there's no reason why it could not  
9 have allowed for some mechanism through which to  
10 permit people to do so. Because the alternative is,  
11 essentially, a ban, as Your Honor previously made  
12 reference to. That's absolutely right. It is a ban.  
13 And a ban of these rights is simply not permissible.  
14 And that is just considering things under the  
15 intermediate scrutiny test, which I understand Your  
16 Honor feels may be applicable. And of course we have  
17 other tests that we could look to. In the context of a  
18 total ban situation, we would say that the first place  
19 to look is the "common use" test that is articulated  
20 through and supported by Heller. And that, alone,  
21 wouldn't allow anything like this to stand because  
22 of the -- it's not even just a severe burden. It's a  
23 ban on the protected conduct.

24 The alternative of being able to acquire, as  
25 Your Honor referred to previously, a serialized firearm

1 through another means, again, that is making the other  
2 options type argument that Heller itself rejected. The  
3 ability to be able to acquire the arm through another  
4 means, is not an answer. It's not an answer to a ban.

5 And so just under Heller alone, you would  
6 have a categorical problem, in that it would have to be  
7 considered something that is just impermissible under  
8 any test. Ninth Circuit law would confirm that as well,  
9 in being that anything that severely burdens a right is  
10 going to be subject to scrutiny. Although, again, even  
11 if we're not in strict scrutiny territory and we're  
12 just looking at immediate scrutiny, the difference only  
13 is the nature of the interest. Whether it's legitimate  
14 or whether it's important or compelling, it still has  
15 to be narrowly tailored. And a ban, along with full  
16 spectrum of the activity, is in all other property  
17 interests associated with it, it's simply not anything  
18 that could be ever considered tailored.

19 THE COURT: Thank you.

20 Let me hear from the State defendants  
21 counsel.

22 MR. CONNER: Good afternoon, Your Honor.  
23 Jeffrey Conner on behalf of the State defendants.

24 Can you hear me okay?

25 THE COURT: For now I can.

1 MR. CONNER: Okay. If there's any problems,  
2 let me know. I'll try to speak slow and clear so that  
3 you can hear me.

4 To begin with, where I depart from my  
5 opponent's position is that he begins by just assuming  
6 that the conduct at issue in this case is protected by  
7 the Second Amendment. What we know from looking at  
8 the Ninth Circuit's case law, as well as case law from  
9 various other circuits throughout the country, courts  
10 have imposed a two-step framework for addressing Second  
11 Amendment challenges to State laws, like the law that's  
12 at issue in this case.

13 The first step is looking at whether or not  
14 the regulation is a burden on protected Second Amendment  
15 conduct. And in Heller, the Supreme Court was very  
16 clear that the protected con -- or the protected rights  
17 under the Second Amendment is the right to self-defense,  
18 and the right to defense of hearth and home. There is  
19 no showing here, whatsoever, that these regulations have  
20 any substantial burden or substantial impact on the  
21 plaintiff's ability to own a handgun, or any other  
22 weapon that they can lawfully own, for purposes of  
23 self-defense within the home. And so I don't --

24 THE COURT: Well, they cannot own a firearm  
25 that's not serialized, under AB-286, for self-defense in

1 the home.

2 MR. CONNER: Correct, Your Honor, but  
3 that is -- I disagree with the sense that that is a  
4 categorical ban that prevents them from exercising their  
5 Second Amendment rights.

6 The argument, here, is simply that they  
7 have a right to self-manufacture a firearm. And that's  
8 really the right that they're trying to enforce here,  
9 but there's no recognition under the Second Amendment,  
10 historically, that there's a right to self-manufacture  
11 a firearm.

12 THE COURT: So is the argument under the  
13 first step that the historical records here support a  
14 ban on unserialized firearms?

15 And the reason I ask is it seems like the  
16 State defendants may be collapsing two analysis under  
17 Heller. Because if the argument is the Court looks to  
18 historical records, I think that the Young decision,  
19 the en banc Young decision by the Ninth Circuit that  
20 was issued this year, is really instructive on the types  
21 of historical records that the Court is required to  
22 review under that analysis. And I don't think the  
23 State offers anything close to that.

24 MR. CONNER: So I would note, Your Honor,  
25 that at page 10 of the opposition, we do cite the Fifth

1 Circuit case, the NRA case out of the Fifth Circuit, for  
2 acknowledging -- that case acknowledged longstanding,  
3 legitimate limitations going back to the colonial era,  
4 addressing limitations on -- or recordkeeping on who  
5 possessed firearms, and having bans on certain persons  
6 that could own a fire -- or possess a firearm. So,  
7 there is a link to longstanding, historical limitations  
8 of this nature that demonstrate that the right that  
9 they're really trying to protect here, which is the  
10 right to self-manufacture a firearm, falls outside the  
11 scope of the Second Amendment.

12 Now, even if the Court were to disagree with  
13 me on that, though, I -- you -- moving on, if there is  
14 Second Amendment conduct here, or a conduct here that is  
15 protected by the Second Amendment, you move on to the  
16 "means ends" test and identify the appropriate level  
17 of strict scrutiny -- or not strict scrutiny. The  
18 appropriate level of "means ends" scrutiny here. And  
19 the default rule is intermediate scrutiny and, under  
20 that test, as Your Honor noted, the State merely needs  
21 to identify a significant substantial or important  
22 interest, and that there is a reasonable fit between  
23 the State law and that interest. And as my opponent  
24 acknowledged here, that these laws support two very  
25 important State limitations on possession of firearms,

1     which is, on the front end of the transaction, is making  
2     sure that prohibitive persons do not obtain a firearm;  
3     and, on the back end, it helps in -- with prosecution of  
4     crime and tracking guns for purposes of prosecuting gun  
5     crime.

6                   THE COURT:    So let me try to dissect that.

7                   In the front end, why doesn't the State just  
8     adopt background check requirements as the plaintiff  
9     advanced here?

10                  MR. CONNER:   Well, Your Honor, I think that  
11     that is a -- that would potentially get into a strict  
12     scrutiny analysis. I don't think we even get to the  
13     means end scrutiny. But under the immediate scrutiny  
14     test, there is not a requirement that we, uh, have a  
15     least restrictive -- there's not a least restrictive  
16     means test under the strict scrutiny. It just has to  
17     be a reasonable fit. And so -- it looks like Your Honor  
18     has a question so I'll --

19                  THE COURT:    No, no. Just finish. Have you  
20     finished your answer?

21                  MR. CONNER:   Well, so there doesn't have  
22     to be a perfect fit between the, you know, the most  
23     restrictive way for the State to achieve this under  
24     immediate scrutiny.

25                  THE COURT:    What about the -- on the

1 back-end, as you described it, with respect to tracing  
2 the firearm to a crime? Do you want to respond to the  
3 plaintiff's argument in their reply that that doesn't --  
4 there's no explanation as to how that reduced threats  
5 to public safety?

6 MR. CONNER: It absolutely does, Your Honor.  
7 It aids law enforcement in prosecuting crime and being  
8 able to track ownership of guns. And when where, when  
9 guns that were used to commit a crime on the street,  
10 where that gun came from.

11 THE COURT: The State is not arguing that  
12 the firearms here fall within the dangerous and unusual  
13 category that is discussed under Heller, is it? I don't  
14 read the briefs to make that argument.

15 MR. CONNER: Um, I don't --

16 THE COURT: So I assume the answer is, no,  
17 you're not making that argument?

18 MR. CONNER: Well, I mean here's the thing,  
19 is that whether they are or not, you know, I think that  
20 our opponents rely pretty heavily on Justice Olita's  
21 concurrence -- I don't know how to pronounce the name on  
22 that case -- but they rely very heavily on that. That,  
23 of course, is just a concurrence and doesn't have any  
24 real bearing here because you only had two justices  
25 join that. And so their argument in that regard relies

1 heavily on that case. I don't think that that's  
2 particularly instructive here. But, again, I don't --  
3 the -- I think the important point here is what we're  
4 talking about in this case is not really about the right  
5 to own a firearm. This isn't a categorical ban on any  
6 plaintiff's ability to own a firearm. It is simply that  
7 they cannot self-manufacture a firearm that doesn't have  
8 a serialized receiver or frame.

9 THE COURT: Thank you.

10 Anything else, Mr. Conner?

11 MR. CONNER: I guess just the one thing I  
12 would note, to make a record of it, is we do object to  
13 the Court's consideration of Exhibits 4 and 5 that, one,  
14 we have not received an expert report that would provide  
15 us with the information that's required for expert  
16 testimony under Rule 26; and, additionally, that they  
17 were improperly attached to the reply brief without  
18 giving the State an adequate opportunity to respond.

19 THE COURT: All right. Thank you.

20 I don't think that -- well, I'm assuming  
21 the County defendant's counsel doesn't have anything  
22 additional to add, am I right?

23 MR. WADLE: That's correct, Your Honor.

24 Zach Wadle on behalf of Douglas County defendants. I  
25 have nothing further to say beyond what's in our brief



1 that we submitted to the Court.

2 THE COURT: All right.

3 Let me hear a brief reply from plaintiff's  
4 counsel. And I think you should address the State's  
5 argument that there is a historical regulation  
6 supporting the argument that there's no right to  
7 self-manufacture firearms under the Second Amendment  
8 and, therefore, that's not conduct protected under  
9 the Second Amendment.

10 MR. DIGUISEPPE: Well, thank you, Your  
11 Honor.

12 Our Complaint lays out, in a lot of detail,  
13 a historical discussion that's apart from the discussion  
14 that comes in through the Declarations -- which I can  
15 respond to the objections to admissibility on those, if  
16 you like -- we have an extensive discussion about the  
17 historical background for self-manufacturing right.  
18 There's been no -- absolutely no effort, whatsoever,  
19 from the State, to try to say that any of that is  
20 inaccurate. Heller makes very clear that the nature  
21 of the rights protected within the scope of the Second  
22 Amendment are defined by the historical and traditional  
23 understanding of firearm rights at the time of the  
24 founding. And that historical discussion in the  
25 Complaint, and in the opening brief of the Motion For

1 Preliminary Injunction made quite clear that there  
2 is a recognized right, and there has been. It is not  
3 sufficient to cite a -- one quote from the NRA case in  
4 the Fifth Circuit, which the only thing in there that  
5 related to restrictions on serialization of tracking  
6 arms was a quote that said that there had been  
7 regulations related to keeping track of who has guns  
8 in the community. That's all that it says. It says  
9 nothing to support the notion that you can just  
10 take away all of the firearms that have already been  
11 manufactured lawfully under the law that it was,  
12 without any showing, whatsoever, that they pose any  
13 danger with these arms. There's nothing to refute any  
14 of the evidence we submitted with respect to the  
15 existence of such a right. Plus, it has -- I can't  
16 ignore that on the back-end of the construction process,  
17 what you have is an end product that is protected  
18 by the Second Amendment. There's been no dispute that  
19 the firearms which have been manufactured heretofore,  
20 lawfully, are within protected classes. That is very  
21 well established in Ninth Circuit and Supreme Court  
22 authority. No dispute to that whatsoever.

23           So, these people have created arms of a  
24 protected class. They can't have their rights to build  
25 those arms and then possess and use the arms -- which is

1 a natural outgrowth of the right to manufacture, just  
2 as the right to possess them relates back to the  
3 manufacture right -- as being recognized historically,  
4 that cannot just be completely eliminated, and get  
5 within even the most lenient form of intermediate  
6 scrutiny, because there's no tailoring.

7 I understand the references to "reasonable  
8 fit," but "reasonable fit," is defined as a narrowing  
9 tailored restriction. And I think it's really notable  
10 that ATF's own proposed rule continues to include an  
11 exception for personal, self-manufacture for personal  
12 use. That shows that it's obvious -- it is obvious,  
13 even through the ATF, that even despite all the dangers  
14 which may exist when those guns, quote, unquote, are  
15 in the hands of the wrong people, that doesn't mean you  
16 can just preclude all right and ability of law abiding  
17 citizens to construct their own firearms, and then use  
18 them for lawful purposes. Why would ATF recognize that  
19 if that wasn't just obvious?

20 It is obvious. The other states that  
21 have regulations, the few that do, California and  
22 Connecticut, for example, they have a process for  
23 State serialization. All of the arguments that my  
24 opposing counsel is making about the need for, or  
25 importance of serialization and background check, just

1 gloss over the whole point that they could certainly  
2 require that. These -- these individuals are not  
3 asking to have some kind of special treatment in that  
4 way. Nobody is asking to have preferential treatment  
5 for themselves. They haven't been given any opportunity  
6 to comply with the very thing the State says that is so  
7 important that they need to enact a ban. That's totally  
8 unacceptable under any view of the law.

9           And with respect to -- if I could respond  
10 quickly -- to the inadmissibility to the declarations  
11 at issue, I would point out that 26(2)(a)(2)(C) doesn't  
12 apply to this situation for two reasons. One, (b)  
13 within that subdivision deals with the timing of the  
14 need to disclose a report, and we're not nearly -- near  
15 a trial that (C) says that you have to be within 90 days  
16 before trial that you have to make such a disclosure.  
17 We're at a preliminary phase of the process, so it  
18 doesn't even apply. But, these types of individuals  
19 also are not experts of the sort who need to produce  
20 such a report because they fall under (C), as employees  
21 of FPC, who do not regularly testify. But aside from  
22 that, the subject matter to which they attest is all  
23 already supported by independent evidence. You know,  
24 for example, even the conclusions they draw are not  
25 disputed, that in the vast majority of the states

1   there's no regulation of this activity; that these types  
2   of firearms and the Classes to which they belong; and  
3   the activity itself are popular throughout the country  
4   and, therefore, these are common use and not dangerous  
5   and unusual, as they would have to be to be subject to  
6   some kind of outright ban, potentially. So they -- we  
7   have independent evidence in that respect.

8                   And I would ask for a moment to respond to  
9   the -- to their evidence because we have objections of  
10   our own to their statement that the Court should take  
11   judicial notice of, quote, various citations to the  
12   federal register and the federal legislative history  
13   without any specification. That's, obviously, quite  
14   vague and unspecific as to what exactly they're asking  
15   for. And the material, as I point out in the briefing,  
16   the material that's cited is full of hearsay and  
17   unsubstantiated (indecipherable). But even if we  
18   take that that evidence at its face value, it just  
19   undermines their position because it shows that the  
20   ATF recognizes how popular these types of arms are;  
21   and, most importantly, perhaps, that despite all the  
22   dangers and dooms and glooms that they point to when  
23   these things are in the hands of the wrong people, they  
24   have an exception for personal use. They retain that.  
25   Nevertheless, I would point out, too, that the Homeland

1 Security assessment report that the State cites, there  
2 was a supplement to that in which the committee itself  
3 pointed out that this type -- even this (indecipherable)  
4 assessment could potentially impugn the rights of  
5 individuals by associating the improperly bringing  
6 into the home of lawful gun owners who are pursuing  
7 this activity lawfully.

8 So I mean, ultimately, their evidence just  
9 undermines their position, particularly with the  
10 exception that ATF provides for itself.

11 The other states, all of that, the law  
12 from the other states, is obviously subject to judicial  
13 notice. You've got six other states, Connecticut and  
14 California, D.C., New Jersey, and Hawaii, all of them  
15 have some other means by which to exercise the right,  
16 even if it's regulated. So, nobody is standing here  
17 saying that the State cannot impose reasonable  
18 restrictions on self-manufacturing and then possession  
19 and use for lawful purposes of those arms after self-  
20 manufacturing. What we're saying is it can't just  
21 outright ban the whole spectrum of activity and the  
22 products that are used to build them and the firearm  
23 that's ultimately constructed of law abiding people  
24 who have done nothing wrong and have no intention of  
25 doing anything wrong. And even as I pointed out, the

1     notion that you can just go and build your own firearm  
2     from serialized receivers and frames isn't even true, as  
3     one of their justifications. That's not true because  
4     the fire -- the parts have to be serialized as required  
5     by federal law, under a system that doesn't even exist.  
6     So, it's a false statement.

7                 I think that the State's interests that  
8     have been articulated are, essentially, pretextual.  
9     A pretextual claim of interest can't support anything.  
10    It has no weight in an interest balancing situation.  
11    It shouldn't be afforded any weight at all. But even  
12    if it is, again, there's got to be narrow tailoring.  
13    And we don't have narrow tailoring in a situation where  
14    there's a total ban on the full spectrum of activity,  
15    which has been protected and is protected based on the  
16    evidence we submitted, to which there was no response,  
17    no dispute, nothing in response besides a quote from a  
18    case out of the Fifth Circuit that talked about keeping  
19    track of who owns the arms. That doesn't negate all  
20    of the historical facts we've submitted that shows that  
21    self-manufacture is a protected right. Just as you  
22    can't take away the implements that a person uses to  
23    develop protected speech -- paper and pen and printers  
24    and whatnot -- you can't just dispossess people of the  
25    products they use to assemble arms, when, especially,

1 the end product is something they're going to use only  
2 for lawful purposes.

3 This has gone way too far and it is an  
4 extreme, extreme example of overreach by the State.  
5 So, you know, it can have all these legitimate interests  
6 that it articulates, and it very well may, and those  
7 interests can stand with a regulation that permits  
8 self-manufacturing, and use of self-manufacturing arms  
9 for lawful purposes. They're trying to eliminate  
10 that spectrum of conduct in the product and the property  
11 interests involved, and that can't be done.

12 THE COURT: All right. Thank you, counsel.

13 I hope to have a decision on the motion  
14 within the next week, if not the next two weeks, so  
15 you can expect a written order on the motion.

16 Thank you.

17 MR. DIGUISEPPE: Thank you, Your Honor.

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19 (Court Adjourned.)

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I certify that the foregoing is a correct  
transcript from the record of proceedings  
in the above-entitled matter.

\s\ Kathryn M. French

June 22, 2022

KATHRYN M. FRENCH, RPR, CCR  
Official Reporter

DATE